

1 ANGELA L. PADILLA (CA SBN 154863)
2 EVA K. SCHUELLER (CA SBN 237886)
3 APadilla@mofo.com
4 MORRISON & FOERSTER LLP
5 425 Market Street
6 San Francisco, California 94105-2482
7 Telephone: 415.268.7000
8 Facsimile: 415.268.7522
9 Email: APadilla@mofo.com

10 Attorneys for Defendants
11 PRINCIPAL LIFE INSURANCE CO. AND
12 TARGET CORPORATION

13 UNITED STATES DISTRICT COURT
14 NORTHERN DISTRICT OF CALIFORNIA
15 SAN JOSE DIVISION

16 DON BORG,

17 Plaintiff,

18 v.

19 PRINCIPAL LIFE INSURANCE CO.,
20 TARGET CORPORATION, and DOES 1
21 through 20, inclusive,

22 Defendants.

Case No. C-07-03149-JW

[Hon. James Ware]

**JOINT CASE MANAGEMENT
CONFERENCE STATEMENT**

Date: April 14, 2008

Time: 10:00 A.M.

Location: Courtroom 8

1 Plaintiff Don Borg ("Plaintiff") and Defendants Target Corporation ("Target") and
2 Principal Life Insurance Company ("Principal Life") submit this Joint Case Management
3 Statement pursuant to L.R. 16-9.

4 1. Jurisdiction and Service. Defendants have been served with Plaintiff's First
5 Amended Complaint. Jurisdiction arises under the Employee Retirement Income Security Act of
6 1974 ("ERISA"). Although Plaintiff's Amended Complaint has dropped his ERISA allegation,
7 Defendants assert that Plaintiff's claims for breach of contract and bad faith denial of insurance
8 benefits are clearly preempted by ERISA, thus giving rise to federal jurisdiction.

9 2. Facts: As this Court's February 29, 2008 Order granting Defendants' Motion to
10 Dismiss states, this action involves an attempt by Plaintiff to reassert ERISA claims against
11 Defendants which were previously settled.

12 In 2005, Plaintiff filed an action in this Court against Defendants, seeking long-term
13 disability ("LTD") benefits under Defendant Target's employee welfare benefit plan. After
14 discovery, and after Defendants filed a motion for summary judgment, Plaintiff agreed to settle
15 that action. On December 19, 2006, Plaintiff and his counsel signed a settlement agreement, and
16 in exchange, Defendants paid Plaintiff an agreed-upon sum.

17 On June 14, 2007, Plaintiff reasserted his claim for LTD benefits against Defendants.
18 Specifically, Plaintiff alleged that Defendants violated ERISA by denying his claim for LTD
19 benefits, and that he was fraudulently induced to sign the settlement agreement. Defendants filed
20 a Motion to Dismiss, or in the alternative for Summary Judgment of, Plaintiff's reasserted claims
21 on August 16, 2007.

22 On February 29, 2008, this Court granted Defendants' Motion, stating that "the plain
23 language of the Settlement Agreement clearly and specifically releases all of Plaintiff's claims
24 against Defendants that existed as of the date of the Settlement Agreement." (February 29, 2008
25 Order Granting Defendants' Motion to Dismiss ("Order") at 4.) The Court also noted that
26 Plaintiff had accepted payment under the Settlement Agreement and that therefore, "the
27 settlement agreement performed by Defendants constitutes an accord and satisfaction of
28 Plaintiff's claims." (Order at 5.)

1 As to the fraud allegation, the Court held that Plaintiff had failed to meet the particularity
2 requirement of Federal Rule of Civil Procedure 9(b). Specifically, the Court held that Plaintiff
3 did not “provide the specific content of the false representations” allegedly made by Defendants.
4 (Order at 6.) Nevertheless, because Plaintiff asserted he could cure the defect in pleading, the
5 Court allowed Plaintiff leave to amend. Plaintiff filed his First Amended Complaint on
6 March 28, 2008.

7 3. Legal Issues: The only legal issue is whether Plaintiff’s amended complaint now
8 meets the particularity requirement for pleading fraud under Rule 9(b). Plaintiff’s breach of
9 contract and bad faith denial of insurance benefits claims arose prior to December 2006 and are
10 thus both encompassed by the settlement agreement, as this Court has already held.

11 4. Motions: There are no motions pending at this time. Defendants plan to file a
12 Motion for Summary Judgment in lieu of an Answer on Monday, April 7, 2008. Defendants also
13 plan to file a Motion for Rule 11 Sanctions.

14 5. Amendment of Pleadings: Plaintiff has already been given the opportunity to
15 amend. Further requests to amend will be opposed by Defendants as futile and vexatious.

16 6. Evidence Preservation: Since the inception of this lawsuit, Defendants have taken
17 steps to properly preserve relevant evidence.

18 7. Disclosures: Defendants intend to make timely and appropriate Rule 26(a)(1)
19 disclosures should they become necessary.

20 8. Discovery: No discovery is necessary under the circumstances of this case.

21 9. Class Actions: Not applicable.

22 10. Related Cases: Not applicable.

23 11. Relief: Defendants contend that Plaintiff is not entitled to any relief.

24 12. Settlement and ADR: Defendants are not amenable to mediation or assignment to
25 magistrate for settlement conference. Plaintiff requests a settlement conference.

26 13. Consent to Magistrate Judge For All Purposes: The parties request that the
27 Honorable Judge Ware continue to conduct all further proceedings in this litigation.
28

14. Other References: Defendants do not believe this case is suitable for reference to binding arbitration, a special master, or the Judicial Panel on Multidistrict Litigation.

15. Narrowing of Issues: None at this time.

16. Expedited Schedule: Not applicable.

17. Scheduling: Defendants request that all scheduling take place after the Court has ruled on Defendants' Motion for Summary Judgment, to be filed Monday, April 7, 2008.

18. Trial: Plaintiff has demanded a jury trial.

19. Disclosure of Non-party Interested Entities or Persons: Defendants will file the disclosures as required.

Dated: April 4, 2008

STANLEY G. HILTON

By: /s/ Stanley G. Hilton [e-filing signature]
Stanley G. Hilton

Attorney for Plaintiff
DONALD BORG

Dated: April 4, 2008

ANGELA L. PADILLA
EVA K. SCHUELLER
MORRISON & FOERSTER LLP

By: /s/ Angela L. Padilla [e-filing signature]
Angela L. Padilla

Attorneys for Defendants
TARGET CORPORATION AND
PRINCIPAL LIFE INSURANCE CO.

I, Angela L. Padilla, am the ECF User whose ID and password are being used to file this Stipulation. In compliance with General Order 45, X.B., I hereby attest that Stanley G. Hilton has concurred in this filing.

By: /s/ Angela L. Padilla [e-filing signature]
Angela L. Padilla